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# Letter to Roger J. Traynor Pertaining to *The New York Times*' article, "N.B.C. Sues F.C.C. On Fairness Issue"

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**The National News Council**

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NED SCHNURMAN  
Associate Director

December 21, 1973.

Justice Roger J. Traynor  
2643 Piedmont Avenue  
Berkeley, Calif. 94704

Dear Roger:

The enclosed article appeared in this morning's edition of the New York Times. I thought you might be interested.

Cordially,



Ned Schnurman

NS:dj  
enclosure



# N.B.C. SUES F.C.C. ON FAIRNESS ISSUE

## Asks Court to Rule on News Balance in Pension Show

By LES BROWN

In what is considered a test case on the right of broadcasters to engage in investigative journalism, the National Broadcasting Company has gone to court to appeal a decision of the Federal Communications Commission that a documentary exposé on private pension plans last fall was in violation of the F.C.C.'s fairness doctrine.

N.B.C. says it will file a petition with the Court of Appeals for the District of Columbia to review the commission's decision concerning "Pensions: The Broken Promise," presented by the network Sept. 12, 1972.

The commission had acted in response to a complaint against the program by a conservative watchdog organization, Accuracy in Media, which has been concerned with "errors and omissions" in news reporting.

By a vote of 5-0, with abstentions by the two most liberal members of the commission—Nicholas Johnson and H. Rex Lee—the F.C.C. on Dec. 3 upheld the Accuracy in Media view that the network did not present a balanced report on pension plans in the documentary.

### Labeled 'Propagandistic'

The conservative watchdog group, which describes itself as a "nonprofit, educational organization," had called the N.B.C. documentary "propagandistic" and said it was overwhelmingly concerned with the flaws in private pension plans "while ignoring the great achievement of American private enterprise in developing a pension system that is overwhelmingly successful."

The fairness doctrine requires broadcasters to provide access to the different points of view whenever they deal with controversial issues. The contrasting views need not be presented in the original broadcast.

N.B.C. could have complied

with the commission's judgment simply by programing some affirmative testimony on private pension plans in its newscasts or on the "Today" show, but Corydon B. Dunham, N.B.C. vice president and general counsel, said the network has chosen to take the "Pensions" decision to court because it has implications on the future of broadcast journalists to deal in exposés and other forms of investigative reporting.

### Position Explained

The N.B.C. petition asserts that the F.C.C. staff, which made the original ruling that was later supported by the five commissioners, had extended the bounds of the fairness doctrine into the area of news judgment. It said the staff treated the program as a pro and con survey of the whole pension system, when instead it was an investigative documentary on the problems in the field.

N.B.C. pointed out that the program did state that there were "many good" pension plans and "many people for whom the promise has become a reality." It also noted that there were three persons presented in the documentary who discussed pensions in an affirmative way.

"In effect, the F.C.C. has

told us that it was not enough to have three people saying pensions were okay," Mr. Dunham said. "The next question is: how many is enough? Is that what a central government agency should be telling newsmen?"

### Cased Called Unique

Mr. Dunham said there had never been a case before the F.C.C. quite like this one, when essentially what was involved was not a quarrel with content but rather with the degree of journalistic balance achieved.

N.B.C. is being represented in its judicial appeal by Floyd Abrams, a specialist in First Amendment cases with the law firm of Cahill Gordon & Rein-del. Mr. Abrams, with Prof. Alexander M. Bickel, had represented The New York Times in the Pentagon Papers case.

In his brief to the Court of Appeals, Mr. Abrams argued, "If there is a hierarchy within the speech protected by the First Amendment, investigative journalism is surely at its apex."

The brief also noted that the "Pensions" documentary received the George Foster Peabody award in May of this year for "its major contribution to public awareness of a compelling social problem and as a 'shining example' of investigative reporting."